MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-899

PAUL N. MARSTON; IDA MAE SMYTH; EDNA MAE THORNTON; VIRGIE HEAP; JAMES O. DIXON; DORIS PARKIN; H. LYLE GRANT; ELIZABETH TEA; PEGGY B. SMITH; JAY H. TURLEY; SOPHIE M. SMITH; G. ESPINOSA MORENO; NORMA MARQUART; CARA N. BETTS; JACK WILLIAMS; & MARICOPA COUNTY BOARD OF SUPERVISORS,

Appellants,

v.

ANITA X. LEWIS AND CATHERINE MANDT,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

MOTION TO AFFIRM

LEWIS & ROCA

By John P. Frank
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Attorneys for Appellees

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Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the final judgment and decree of the district court be affirmed on the ground that the question raised on appeal is so unsubstantial as not to need further argument.

STATEMENT

A three judge district court held that Arizona's 50 day durational residence requirement (A.R.S. § 16-101, Supp. 1972-73) and an Arizona law (A.R.S. § 16-107, Supp. 1972-73) cutting off registration for voting 50 days before special, primary and general elections are unconstitutional. However, it permitted these statutes to be applied in 1972 because of the lateness of the ruling in relation to the general election held November 7, 1972. For all future elections, it required a maximum 30 day residency requirement and the use of a 30 day cutoff. The State appeals.

ARGUMENT

1. The trial court properly applied the "compelling state interest" test, *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) as applied in *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972) to voter registration. The decision accords with the general policy of the Federal Voting Rights Act of 1970, 42 U.S.C.A. § 1973aa-1 (Supp. 1972), and with the forty states which apply registration periods of 30 days or less; see opinion below and citations therein.* The decision accords not only with *Dunn v. Blumstein, supra*, but also with *Ferguson v. Williams*, 343 F. Supp. 654 (N.D. Miss. 1972) (eliminating a four-month closing date); *Young v. Gnoss*, 7 Cal. 3d 18, 101 Cal. Rptr. 533, 496 P.2d 445 (1972)

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*Appellants suggest that several states cut off registration of voters considerably more than 30 days prior to election. (Appendix C. Jurisdictional Statement). Appellees list the exact number of days for those states for which appellants list longer time periods. See Appendix "A" to this motion.

cert. denied, 41 U.S.L.W. 3207 (1972) (shortening a 90 day requirement to 30 days); and *Hinnant v. Sebesta*, 346 F. Supp. 913 (M.D. Fla., 1972) (abolishing a 60 day state requirement.)

2. The State's claim to have shown a compelling interest, said by it to be based on peculiar dictates of Arizona history or of local administration, is purely factual. The trial court very carefully and expressly considered those factual assertions, based on the record before it, and stated:

> "The conclusion is insurmountable that, since the State has presented no facts demonstrating a compelling interest in maintaining a fifty-day residency and registration requirement for election of officers other than president and vice president beyond the election set for November 7, 1972, enforcement of the contested statute must be enjoined. We are certain that the State, given sufficient time, can and will make the necessary changes in laws, budgets, administration, and personnel to meet a thirty-day deadline for registrations for all residents instead of the present fifty-day requirement for residents here more than fifty-days."

The court properly reached the conclusion that no compelling interest exists, and there is no showing that its conclusion was without foundation.

CONCLUSION

The appellants present no substantial question for the decision of this Court and the judgment and decree of the court below should be affirmed.

Respectfully submitted,
LEWIS AND ROCA

By John P. Frank
James P. Walsh

January, 1973. Attorneys for Appellees

APPENDIX A

State	Time Period Between Closing Registration and General Election	Authority
California	30 days	*Young v. Gnoss*, 7 Cal. 3d 18, 101 Cal. Rptr. 533, 496 P.2d 445 (1972) *cert. denied*, 41 U.S.L.W. 3207 (1972)
Hawaii*	25 days	Haw. Rev. Stat. §§ 11-24, 12-2 (1972 Supp)
Maryland	29 days	Md. Ann. Code Art. 33 § 3-8(a)
Michigan	32 days	Mich. Stat. Ann. § 6.1497
Mississippi	30 days	*Ferguson v. Williams*, 343 F. Supp. 654 (N.D. Miss., 1972)
Montana	30 days-federal election 40-days-other elections	Rev. Code. Mont. 1947 Sec. 23-3016 (1971 Supp.)
Nevada	31 days	Nev. Rev. Stat. 293.560(1)

*Five days after primary election held on *first Saturday* of October; in 1972, this period was 25 days.

PROOF OF SERVICE

I, JOHN P. FRANK, attorney for the above named plaintiffs-appellees herein, and a member of the Bar of the Supreme Court of the United States, certify that on the____ day of January, 1973, I served copies of the foregoing Motion to Affirm on the defendant-appellants by mailing copies in duly addressed envelopes with first-class postage prepaid to their attorneys of record as follows:

GARY K. NELSON
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Attorneys for Appellants

_____

John P. Frank

SUBSCRIBED AND SWORN TO before me this ____ day of January, 1973.

/s/ Edwina Price

Notary Public

My commission expires:
March 31, 1975